

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.4622 OF 1993

The Board of Trustees of the
Port of Bombay. .. Petitioner
Vs
Ramdas Satai Yadav and 4 ors. .. Respondents.

Mr U.J.Makhija, senior counsel, i/b M/s Mulla & Mulla,
for the petitioner.

Mr Ghadge i/b Mr A.S.Desai for respondent nos 1 to 3.

CORAM : D.B.BHOSALE, J.
DATE : 14.09.2006

PC:

1. Heard the learned counsel for the parties.
2. The petitioner-Board has impugned the following order dated 8.4.1993 in the instant writ petition.

"Plaintiff and advocate absent. Mr Shetty for defendants no.1. Mr Karia for the defendant no.2. On account of practical difficulty defendants are unable to execute order dt.16.2.1992, Defendants states that there are other obstructionist for which necessary proceedings are pending in Small Causes Court being Suit No.113/152 of 1979 the 1st Defendant are therefore directed to implead the plaintiff 1 to 3 in the present suit as well as the named person in the Commr's Report dt.28.11.1992 as further obstructionist if they are not on record to the said Small Cause proceedings and will obtain necessary orders from the said Court in relation to them. It may be clarified that the statement is on behalf of the B.P.T.. The Defendant No.2 may still be at lib.to follow due process law in respect of the structure that have come up on the suit site. If any other person's affected they will be at lib.to make an application to the Court of Small Causes to be joined as obstructionist to the said proceedings. In view thereof, nothing survives in the present suit.

Accordingly, suit and notice of motion disposed off."

From perusal of the order, it is clear that the suit filed by respondent nos 1 to 3, has been disposed of. While disposing of the suit, the petitioners, who were plaintiffs in Suit No.113/152 of 1979, have been directed to implead respondent nos 1 to 3 and the persons named in the Court Commissioner's report dated 28.11.1992 as further obstructionists in the execution proceedings. The petitioners' suit had been decreed on 1.8.1989 and the execution proceedings taken out by them are still pending. In view of the rights of third person/s in possession of the property, if any, which is the subject matter of a decree, under Order 21 and rule 97 thereof in particular of the Code of Civil Procedure, the directions given in the aforesaid order were not necessary and are unsustainable in law. The learned counsel for the parties have fairly stated that I need not record detail reasons for setting aside the aforesaid order and for allowing this petition and have agreed for the following order.

(a) The impugned order dated 8.4.1993 passed on the Notice of Motion No.6253 of 1992 in L.C.Suit no.7458 of 1992, is quashed and set aside. It is open for

respondent nos 1 to 3 and all persons named in the Court Commissioner's report dated 28.11.1992 or any other person/s similarly placed, to adopt appropriate proceedings as may be available in law.

(b) Insofar as respondent nos 1 to 3, i.e. Ramdas Satai Yadav, Ramsuret Khannu Yadav, and Komal Bhagirathi Yadav, are concerned, if they are found to be in possession of the property as of today, the property, which is the subject matter of the execution proceedings, stands protected till 28.10.2006. While granting protection, I shall not be understood to have recognised their rights, if any, in the suit property. The executing court shall deal with the application/s filed by them or any other person/s in accordance with law and without being influenced by this order or the order impugned in the present writ petition. The rule is made absolute in the aforesaid terms. No order as to costs.

(D.B.BHOSALE, J.)